



4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a), (b), (c), 28 U.S.C. § 1400(b), and E.D.Mo. L.R. 2.07(B)(3) and (4).

### **THE PARTIES**

5. Plaintiff Solae, LLC (“Solae” or “Plaintiff”) is a Delaware limited liability corporation, having a principal place of business in St. Louis, Missouri.
6. Upon information and belief, defendant Archer Daniels Midland Company (“ADM”) is a corporation organized under the law of Delaware, having its principal place of business at 4666 Faries Parkway, Decatur, Illinois 62526.
7. Upon information and belief, defendant Amerifit Nutrition, Inc. (“Amerifit”) is a corporation organized under the law of Delaware, having its principal place of business at 166 Highland Park Drive, Bloomfield, Connecticut 06002.

### **BACKGROUND**

8. St. Louis-based Solae is a leader in the research, manufacturing and marketing of high-quality, soy-based ingredients and ingredient systems.
9. There are three principal classes of phyto-oestrogens: isoflavones, lignans, and coumestans.
10. Isoflavones are bioactive chemicals found naturally in plants. Soy isoflavones exist in three main families: genistein, daidzein and glycitein. Four chemical forms of isoflavones known as aglucones, glycosides, malonyl conjugates, and acetyl

conjugates are found within each family. Soybeans are the major food source of the naturally-occurring isoflavones genistein and daidzein.

11. In the production of commercial products such as soy protein concentrates, the focus has been to remove soy isoflavone compounds since they are associated with the bitter flavor of soybeans. In a conventional process for the production of a soy protein concentrate, extracted material containing soy isoflavones, is typically discarded. As a result, the extract from a conventional process is an inexpensive and desirable source of soy isoflavones.
12. Recent clinical research suggests that isoflavones contained in vegetable protein materials such as soybeans, are bioactive compounds that may provide various health benefits, including the reduction of cardiovascular risk factors, the amelioration of conditions caused by reduced levels of endogenous estrogen in women (*e.g.*, menopause or premenstrual syndrome), and the inhibition of certain human cancer cells (*e.g.*, breast and prostate cancer cells).
13. U.S. Patent No. 6,642,212, issued November 4, 2003 (copy attached as Exhibit 1) (“the ‘212 patent”) entitled “Health Supplements Containing Phyto-Oestrogens, Analogues Or Metabolites Thereof,” names Graham Kelly as inventor and lists on its face Novogen Research Pty. Limited (New South Wales, Australia) as assignee.
14. Solae is the sole and exclusive licensee of the ‘212 patent for products containing soy-derived isoflavones. Solae was formerly known as Protein Technologies International, Inc. (“PTI”). On or about March 28, 2003, PTI was renamed and reincorporated as Solae.

15. Upon information and belief, ADM manufactures and markets a product that infringes at least one claim of the '212 patent, which product is known as Novasoy® ("Novasoy") and is a powdered compound extracted from soybeans containing naturally-occurring isoflavones.
16. Upon information and belief, ADM's Novasoy contains at least the soy isoflavones daidzein, genistein, and glycitein, their glycosides, and acetyl and malonyl esters.
17. Upon information and belief, ADM's Novasoy isoflavone material is marketed and sold by ADM in this district and throughout the United States.
18. Upon information and belief, ADM's Novasoy isoflavone material is marketed and sold by ADM to manufacturers for incorporation into health and/or dietary supplements that infringe at least one claim of the '212 patent and are marketed and sold in this district and throughout the United States.
19. Upon information and belief, Amerifit manufactures and markets a product that infringes at least one claim of the '212 patent, which product is known as Estroven® ("Estroven") and is a health supplement containing Novasoy isoflavone material provided by ADM.
20. Upon information and belief, Amerifit's Estroven contains at least the soy isoflavones daidzein, genistein, and glycitein, their glycosides, and acetyl and malonyl esters.

21. Upon information and belief, Amerifit's Estroven is marketed and sold by Amerifit in this district and throughout the United States for alleviating symptoms associated with menopause.
22. U.S. Patent No. 6,664,382, issued December 16, 2003 (copy attached as Exhibit 2) (the '382 patent") entitled "Recovery of Isoflavones from Soy Molasses," names Doyle Waggle and Barbara Bryan as inventors and lists as assignee Solae, LLC ("Solae").
23. Upon information and belief, ADM manufactures and markets a product that infringes at least one claim of the '382 patent, which product is known as Novasoy® ("Novasoy") and is a powdered compound extracted from soybeans containing naturally-occurring isoflavones.
24. Upon information and belief, ADM's Novasoy isoflavone material is marketed and sold by ADM to manufacturers for incorporation into health and/or dietary supplements that infringe at least one claim of the '382 patent and are marketed and sold in this district and throughout the United States.
25. Upon information and belief, Amerifit manufactures and markets a product that infringes at least one claim of the '382 patent, which product is known as Estroven® ("Estroven") and is a health supplement containing Novasoy isoflavone material provided by ADM.
26. U.S. Patent No. 6,680,381 issued January 20, 2004 (copy attached as Exhibit 3) ("the '381 patent") entitled "Recovery of Isoflavones from Soy Molasses," names Doyle H.

Waggle and Barbara A. Bryan as inventors and lists on its face Solae, LLC (St. Louis, MO) as assignee.

27. Upon information and belief, ADM manufactures and markets a product that infringes at least one claim of the '381 patent, which product is known as Novasoy® ("Novasoy") and is a powdered compound extracted from soybeans containing naturally-occurring isoflavones.
28. Upon information and belief, ADM's Novasoy isoflavone material is marketed and sold by ADM to manufacturers for incorporation into health and/or dietary supplements that infringe at least one claim of the '381 patent and are marketed and sold in this district and throughout the United States.
29. Upon information and belief, Amerifit manufactures and markets a product that infringes at least one claim of the '381 patent, which product is known as Estroven® ("Estroven") and is a health supplement containing Novasoy isoflavone material provided by ADM.
30. U.S. Patent No. 6,706,292 issued March 16, 2004 (copy attached as Exhibit 4) ("the '292 patent") entitled "Recovery of Isoflavones from Soy Molasses," names Doyle H. Waggle and Barbara A. Bryan as inventors and lists on its face Solae, LLC (St. Louis, MO) as assignee.
31. Upon information and belief, ADM manufactures and markets a product that infringes at least one claim of the '292 patent, which product is known as Novasoy®

("Novasoy") and is a powdered compound extracted from soybeans containing naturally-occurring isoflavones.

32. Upon information and belief, ADM's Novasoy isoflavone material is marketed and sold by ADM to manufacturers for incorporation into health and/or dietary supplements that infringe at least one claim of the '292 patent and are marketed and sold in this district and throughout the United States.

33. Upon information and belief, Amerifit manufactures and markets a product that infringes at least one claim of the '292 patent, which product is known as Estroven<sup>®</sup> ("Estroven") and is a health supplement containing Novasoy isoflavone material provided by ADM.

### **FIRST CAUSE OF ACTION**

#### **PATENT INFRINGEMENT**

34. Solae here repeats and incorporates by reference all the allegations of paragraphs 1 through 33 above.

35. Upon information and belief, ADM has directly and/or contributorily infringed at least one claim of the '212 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

36. Upon information and belief, ADM has knowingly induced others to infringe at least one claim of the '212 patent in connection with making, using, offering to sell,

selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

37. Upon information and belief, Amerifit has directly and contributorily infringed at least one claim of the '212 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

38. Upon information and belief, Amerifit has knowingly induced others to infringe at least one claim of the '212 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

39. Upon information and belief, ADM has directly and/or contributorily infringed at least one claim of the '382 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

40. Upon information and belief, ADM has knowingly induced others to infringe at least one claim of the '382 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

41. Upon information and belief, Amerifit has directly and contributorily infringed at least one claim of the '382 patent in connection with making, using, offering to sell,



selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

42. Upon information and belief, Amerifit has knowingly induced others to infringe at least one claim of the '382 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

43. Upon information and belief, ADM has directly and/or contributorily infringed at least one claim of the '381 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

44. Upon information and belief, ADM has knowingly induced others to infringe at least one claim of the '381 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

45. Upon information and belief, Amerifit has directly and contributorily infringed at least one claim of the '381 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

46. Upon information and belief, Amerifit has knowingly induced others to infringe at least one claim of the '381 patent in connection with making, using, offering to sell,

selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

47. Upon information and belief, ADM has directly and/or contributorily infringed at least one claim of the '292 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

48. Upon information and belief, ADM has knowingly induced others to infringe at least one claim of the '292 patent in connection with making, using, offering to sell, selling, and/or importation of Novasoy. ADM will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

49. Upon information and belief, Amerifit has directly and contributorily infringed at least one claim of the '292 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

50. Upon information and belief, Amerifit has knowingly induced others to infringe at least one claim of the '292 patent in connection with making, using, offering to sell, selling, and/or importation of Estroven. Amerifit will continue such infringing activities, to the irreparable injury of Solae, unless enjoined by the Court.

#### **REQUEST FOR RELIEF**

WHEREFORE, Solae prays that this Court enter judgment in its favor against the Defendants and grant the following relief:

- A. Permanently enjoin Defendants, their agents, successors and assigns and all persons acting on their behalf or within their control, from making, using, selling, or offering to sell, importing or otherwise engaging in acts of infringement of the '212 patent;
- B. Permanently enjoin Defendants, their agents, successors and assigns and all persons acting on their behalf or within their control, from making, using, selling, or offering to sell, importing or otherwise engaging in acts of infringement of the '382 patent;
- C. Permanently enjoin Defendants, their agents, successors and assigns and all persons acting on their behalf or within their control, from making, using, selling, or offering to sell, importing or otherwise engaging in acts of infringement of the '381 patent;
- D. Permanently enjoin Defendants, their agents, successors and assigns and all persons acting on their behalf or within their control, from making, using, selling, or offering to sell, importing or otherwise engaging in acts of infringement of the '292 patent;
- E. Award Plaintiff damages caused by Defendants' patent infringement as determined by the jury in this action;
- F. Enter an order declaring this an exceptional case and awarding Plaintiff interest, costs and disbursements in this action, including reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

G. Award Plaintiff such further relief as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable in this action.

Dated: April 26, 2004.

Respectfully submitted,

**LEWIS, RICE & FINGERSH, L.C.**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26th day of April, 2004, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following persons:

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